

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4346 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURENDRANAGAR DISTRICT

PANCHAYAT

Versus

MALIK BAKARBALIBHAI CHUNARA

Appearance:

MR HS MUNSHAW for Petitioner

MRS SANGEETA N PAHWA for Respondent No. 1

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 05/12/97

ORAL JUDGEMENT

Heard Mr. Munshaw for the petitioner and Ms. Pahwa for the respondent. Rule had already been issued on this matter with notice as to interim relief. Since Rule was issued on this matter, when the matter reached before me on 30th September, 1997, I adjourned it to subsequent date for final disposal. Mr. Munshaw wanted to tender compilation of documents as well as oral evidence. Hence on 30th September, 1997, he was

permitted to produce them by the next date which was 9th October, 1997. The matter was adjourned on some six dates thereafter, but those documents were not produced. On the matter reaching on 3rd December, 1997, on the request of Mr. Munshaw, it was again adjourned to 5th December, 1997. Today, he has sought time to tender oral evidence. Ms. Pahwa was not given copies of documents earlier and hence they are not taken on record.

2. Even then, looking to the record of this petition, as it stands, it appears that the petitioner had pleaded before the trial court that the respondent was engaged on a temporary basis and that this was a case covered under Sec. 2(oo)(bb) of the I.D.Act and hence there was no question of retrenchment compensation being paid to the respondent. It does appear in Para 5 of the award of the learned Judge that the workman was engaged for a short duration. Vouchers of payment from October, 1986 to February, 1987 were produced before the court. The workman was doing miscellaneous work only. Nobody was kept in his place after his discontinuation. He was engaged on a Part Time Job and that he had left that job on his own. On these facts, in my view, the learned trial Judge could not have come to the conclusion that there was a violation of Sec.25F of the I.D.Act.

3. Mr. Munshaw submitted orally and it is also stated in Para 4(3) of the petition that the appointment of the respondent was on a scarcity work and that work could not be considered an industrial activity. It does not appear from the papers before me as to whether that plea was specifically taken and justified before the trial court. A statement is annexed at Page 16 showing the payments made to this employee and in the comment section thereof in some places, it is stated that the payment was on account of scarcity and contingency. On a specific query put to Mr.Munshaw, he is ,however, not in a position to state that the particular statement was filed before the Tribunal. He states that some vouchers were produced. Xerox copies of the same were shown to him. No such inference can be drawn from those documents. In view of what is stated above, probably, the learned Judge felt helpless because of the manner in which the matter was defended in the trial court leading to the impugned award. I am also constrained to say, that though this matter has been adjourned from time to time, the relevant papers have not been produced before me. The least that was expected of the petitioner was to file a copy of the entire compilation before the trial court, since they wanted to find fault with the trial court.

4. Mr. Munshaw submits that the petitioner be permitted to raise the defence of the activity being scarcity work before the Labour Court, so that an opportunity be provided to the petitioners to defend their case properly as a last chance. Ms. Pahwa submitted that the worker is not responsible for the stand taken by the petitioner or their inapt defence and she is right in her submission. But looking to the fact of a temporary assignment for a limited duration and limited working hours, that nobody was employed as regular employee in place of the respondent thereafter, it is desirable that the petitioner ought to be permitted to explain clearly the nature of the engagement of the employee concerned. The order passed by the learned Judge is, therefore, interfered with and the reference is restored. The petitioner will have liberty to amend their written statement and produce additional documentary and oral evidence. The additional evidence will be only on the point of the respondent being engaged in scarcity work and the respondent will be given opportunity to cross examine the petitioner's witness. That is only to give an opportunity to the petitioner in the interest of justice. However for this opportunity, the petitioner will pay costs of Rs.2,000/to the respondent. Costs will be paid within four weeks from today. The learned trial Judge will endeavour to hear and decide the matter expeditiously and preferably by the end of June, 1998.

5. All the observations that are made above are on the basis of record which is tendered in this court and the learned trial Judge of the Labour Court will be free to draw his own conclusion after scrutinising all the material which may be placed before him.

6. With the above direction, Rule is made absolute to the aforesaid extent, with the costs quantified as above. Writ to go down forthwith.

(ccs)